

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RICHARD L. SHERWOOD and U.S. POSTAL SERVICE,
AIR PARK STATION, Scottsdale, AZ

*Docket No. 03-1910; Submitted on the Record;
Issued October 8, 2003*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether appellant established that he sustained an injury in the performance of duty.

On October 8, 2002 appellant, a 55-year-old letter carrier, filed an occupational disease claim (Form CA-2). Appellant stated that he had a problem with his right knee and his doctor advised him to consider retirement. His doctor also advised that it was just a matter of time before appellant's other knee would begin to bother him. Appellant stated that he experienced pain in his left knee and it became worse on July 11, 2002, when it was swelling up.¹ He described his condition as deterioration of cartilage due to constant standing and use. Appellant identified July 11, 2002 as the date he first became aware of his employment-related condition. On the reverse side of appellant's October 8, 2002 Form CA-2, the employing establishment reported that appellant continued to perform his regular duties.

In a letter dated October 22, 2002, the employing establishment controverted appellant's claim on the basis that he had not provided a detailed statement outlining specific work factors and failed to provide any medical evidence identifying a diagnosis.

By decision dated October 29, 2002, the Office of Workers' Compensation Programs denied appellant's claim. The Office found that appellant had not identified a specific event, incident or employment exposure that allegedly caused his injury. The Office also noted that it appeared that appellant had filed his claim for possible future knee problems. However, the Office explained that it could not accept a claim for alleged future problems. Additionally, the Office noted that appellant had an accepted claim for his right knee with a date of injury of July 20, 2001 (13-2036901) and an accepted claim for a left knee injury arising on July 18, 2002

¹ Appellant also stated that shortly afterwards he injured his left muscle. Which left muscle appellant injured is unclear from the Form CA-2. Appellant also noted on the Form CA-2 that he was told to file a Form CA-2a, notice of recurrence, which he reportedly did on July 22, 2002. Appellant also stated that he submitted medical evidence with his July 22, 2002 Form CA-2a.

(13-2058426). The Office stated that the recurrence claim appellant filed on July 22, 2002 had been associated with his previously accepted right knee claim (13-2036901) and would be addressed in a separate decision. The Office advised that, if appellant wished to reopen his claim for a left knee injury, he should file a Form CA-2a under claim number 13-2058426.

In a July 14, 2003 letter addressed to the Department of Labor, Employment Standards Administration, appellant stated that he would like to appeal the denial of claim No. 13-2064596. Appellant stated, among other things, that there was a great deal of confusion about the different claim forms he had filed. He forwarded a similar letter to the Board, also dated July 14, 2003.

The Office reviewed appellant's claim on the merits and, by decision dated July 28, 2003, denied modification of the October 29, 2002 decision.

The Board notes that the Office did not have authority to issue its July 28, 2003 decision denying modification. The instant appeal was dated July 14, 2003 and received by the Board on July 21, 2003. The Board and the Office may not simultaneously exercise jurisdiction over the same issue in a case.² At the time the Office issued its July 28, 2003 decision, appellant had already filed an appeal with the Board regarding the Office's October 29, 2002 decision. As the Board had obtained jurisdiction over the case on July 21, 2003, the Office lacked the authority to issue the July 28, 2003 decision denying modification. Accordingly, the Office's July 28, 2003 decision is set aside as null and void.³

The Board finds that appellant failed to establish that he sustained an injury in the performance of duty.

In order to establish that an injury was sustained in the performance of duty, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.⁴ Causal relationship is a medical question that can generally be resolved only by rationalized medical opinion evidence.⁵

The record on appeal does not include any medical evidence regarding an injury to appellant's left or right knee. Additionally, other than noting that the claimed cartilage deterioration was due to "constant standing and use," appellant did not specifically identify any

² *Arlonia B. Taylor*, 44 ECAB 591 (1993).

³ *Terry L. Smith*, 51 ECAB 182 (1999).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ See *Robert G. Morris*, 48 ECAB 238 (1996). A physician's opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors must be based on a complete factual and medical background of the claimant. *Victor J. Woodhams*, *supra* note 4. Additionally, in order to be considered rationalized the opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale, explaining the nature of the relationship between the diagnosed condition and the claimant's specific employment factors. *Id.*

employment factors that allegedly caused or contributed to his claimed condition. The Board finds there is insufficient medical and factual evidence in the record to even establish a *prima facie* claim of entitlement to benefits. As the record is devoid of any factual or medical evidence in support of the instant claim, appellant failed to establish that he sustained an injury in the performance of duty.

The October 29, 2002 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
October 8, 2003

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member